

1 unable to contact Mr. Druskoff to find out where it is. We
2 can't provide any xerox of it. But we just don't have it yet
3 and we'd like to be able to supply that as soon as we get it.
4 But we still would like to tender this if it's receipt is
5 delayed because of that. We would still like to have it
6 marked for identification at this time.

7 JUDGE MILLER: Are you trying to get --

8 MR. WAYSDORF: Yes.

9 JUDGE MILLER: Are you trying to get --

10 MR. WAYSDORF: Oh, yes. Absolutely. We've been
11 unable to contact --

12 JUDGE MILLER: All right. I'm, I'm going to -- I'll
13 -- I'm not going to, I'm not going to throw this exhibit out
14 on the grounds of a, of a -- the lack of original declaration.
15 But if, if, if it isn't cured before we get this -- before we
16 get too far along in this case, Mr. Waysdorf --

17 MR. WAYSDORF: Understood.

18 JUDGE MILLER: But, but as long as you -- you're
19 trying, I'm not going to throw it out for that reason. Now, I
20 don't, I don't know what I'm going to do with it on, on other
21 reasons. We'll find out. All right. Proceed.

22 MR. WAYSDORF: Shall we mark it, then, for
23 identification?

24 JUDGE MILLER: Yes. Go ahead. Yes.

25 MR. WAYSDORF: It's TMC Exhibit 8, two-page exhibit,

1 state -- referenced as the testimony of Marvin Druskoff,
2 President and Owner of Government Communications Marketing.

3 JUDGE MILLER: The document you've just described
4 will be marked for identification as TMC Exhibit 8.

5 (Whereupon, the document
6 referred to as TMC Exhibit No. 8
7 was marked for identification.)

8 JUDGE MILLER: Do you offer it in evidence?

9 MR. WAYSDORF: Yes, sir, we are.

10 JUDGE MILLER: With, with the, the caveat that he
11 has made about the declaration, do you have any other
12 objections?

13 MR. CHURCHILL: Yes, Your Honor. The other objec-
14 tions I have are similar to what we previously talked about
15 with the other witness in that the, the declaration contains
16 comments about cancellation of service, but again it doesn't
17 say when, and for that basis there, there's a relevance objec-
18 tion. And, also, there's nothing -- no documentation here
19 that would support that other than this declaration that this
20 witness was a customer of TMC's during the, the relevant time
21 period.

22 JUDGE MILLER: You say that --

23 MR. WAYSDORF: Well, he knows he was a customer.

24 JUDGE MILLER: Well. First of all, again, I will
25 say exactly what I, what I said before. I want to know when

1 | this ma-- when this outfit, Government Communications Market-
2 | ing, took out the service. I want to know when it was can-
3 | celled. I want to know -- I want it verified, if it can be,
4 | with the material that was attached to the Complaint. If
5 | there is any way we can find out when these call-- when, when
6 | this -- when these problems -- disconnects without notice in
7 | the middle of a conversation, the call would not go through --
8 | I would like to get some idea as how often it occurred and
9 | when it occurred.

10 | MR. CHURCHILL: Your Honor, with this particular
11 | customer, I note that he wasn't listed on what's been attached
12 | to the Complaint as Exhibit B. So, you're asking, you know --

13 | JUDGE MILLER: That's right. That's, that's, that's
14 | one of the things that I'm asking. And it's, it's -- you say
15 | he's not in there?

16 | MR. CHURCHILL: No.

17 | JUDGE MILLER: Well, I, I'm, I'm -- when you get in
18 | touch with Mr. Druskoff, tell him to bring his records.

19 | MR. HELEIN: Yes, Your Honor.

20 | MR. CHURCHILL: I have no further objections.

21 | JUDGE MILLER: TMC Exhibit 8's received subject to
22 | the caveats that I laid down.

23 | (Whereupon, the document marked
24 | for identification as TMC Ex-
25 | hibit No. 8 was received into

1 evidence subject to the Judge's
2 rulings made hereto.)

3 MR. WAYS DORF: Your Honor, with respect to TMC
4 Exhibit 9, I have another slight problem, which is that what
5 was -- the copy of the exhibit that was sent back to us by the
6 witness was a subsequent draft to the one that we exchanged
7 last week. The substance is, as far as I can tell, identical,
8 but it -- the one he faxed back to us that day was an earlier
9 draft that didn't have the proper margins and such things and
10 we had sent him another one, and he then sent us back the
11 later one. The upshot of that was we have in the copies given
12 to the reporter we have the newer one, which he -- we have the
13 actual signature on the declaration, and I would suggest if we
14 could hand to the Parties and Your Honor the one that we have
15 now verified and substitute for the one in the books that we
16 exchanged last week. It seems to me that that would be the,
17 the best way of handling that.

18 JUDGE MILLER: Oh, I listened to you. What do you
19 want to give me, another page 2?

20 MR. WAYS DORF: No, I want to give you another whole
21 exhibit 9.

22 JUDGE MILLER: What's wrong with page, what's wrong
23 with page 1 of Exhibit 9, Mr. --

24 MR. WAYS DORF: When we sent him a subsequent ver-
25 sion, we changed the margins to an inch-and-a-half or two

1 inches on the left and it wound up shifting the declaration
2 actually to page 3. So, the whole th-- say that, and also
3 shifting some of what's on page 1 on the copy that you have
4 onto page 2.

5 JUDGE MILLER: Is there any difference in content?

6 MR. WAYSDORF: I believe that --

7 JUDGE MILLER: -- when all is said and done?

8 MR. WAYSDORF: I believe that the, the change --
9 there was one change in paragraph one where the copy that you
10 have does not say -- no, that's the same. What am I saying?
11 I'm sorry.

12 JUDGE MILLER: It's pretty hard to --

13 MR. WAYSDORF: It's --

14 JUDGE MILLER: -- goof up paragraph one.

15 MR. WAYSDORF: Yeah, I know. I know. But we -- the
16 new one has, after the word, word "herein," the new one has
17 "and if called as a witness could testify competently there-
18 to." I can't explain why that was added, but it was added.
19 In addition, the newer version -- you will notice on page 2 of
20 the old version there is a blank where he wrote in the service
21 that he now employs, which is ExpressTel, and on the later
22 version which we had sent back to him that same day that had
23 been corrected and typed. So, all I'm saying is we don't have
24 the original of the page 2 bearing his signature. And on the
25 set, set, set that he sent back to us that was not on page 2,

1 and it's on page -- a new page 3, which you don't have at all.

2 So, I was suggesting that we just substitute --

3 JUDGE MILLER: You want to substitute a three-page
4 TMC Exhibit 9 for a two-page TMC Exhibit 9 and you have accu-
5 rately delineated the --

6 MR. WAYSDORF: The differences.

7 JUDGE MILLER: -- the differences?

8 MR. WAYSDORF: Yes, sir.

9 JUDGE MILLER: Is that a fair statement?

10 MR. WAYSDORF: Yes, sir.

11 JUDGE MILLER: Okay. Proceed.

12 MR. WAYSDORF: A copy for Your Honor, a copy for Mr.
13 Wyatt, and two copies for Pac Bell.

14 MR. CHURCHILL: Thank you.

15 JUDGE MILLER: How about the reporter?

16 MR. WAYSDORF: It's already in her version.

17 JUDGE MILLER: Okay.

18 MR. WAYSDORF: I took the liberty of jumping the gun
19 and giving it for --

20 JUDGE MILLER: Oh, you thought I was going to --

21 (Laughter.)

22 MR. WAYSDORF: No. No. I -- suggest, Your Honor.

23 I also brought multiple copies of the old one --

24 (Laughter.)

25 MR. WAYSDORF: -- in case Your Honor suggested that

1 | there was not a good --

2 | JUDGE MILLER: All right. Okay.

3 | MR. WAYSORF: I tried to cover all the bases. In
4 | any event, now what we're asking to be identified as TMC
5 | Exhibit 9 is a three-page exhibit entitled "Testimony of Barry
6 | G. Yeager, President of BGY Search, Inc., and Authorized
7 | Representative for SGL Search, Inc." And I ask that be
8 | identified.

9 | JUDGE MILLER: The document -- wait a minute. I'll
10 | make this little change from two to three. The document you
11 | just described will be marked for identification as TMC
12 | Exhibit No. 9.

13 | (Whereupon, the document
14 | referred to as TMC Exhibit No. 9
15 | was marked for identification.)

16 | MR. WAYSORF: And I ask that it be accepted into
17 | evidence.

18 | JUDGE MILLER: All right. Objections?

19 | MR. CHURCHILL: Yes, Your Honor. This document --
20 | the testimony also does not indicate when Mr. Yeager cancelled
21 | service, and that I make the same objection as, as to the
22 | relevance of this testimony.

23 | JUDGE MILLER: I, I want the same information. I
24 | want to know when he's -- when, when he -- when service was
25 | initiated, when it was stopped, and, again, if you can verify

1 | it from Exhibit B of the Complaint. And if you can't, let's
2 | find out -- tell him to -- better bring some of his own
3 | records if he, if he -- if you can't verify it.

4 | MR. CHURCHILL: He's not on Exhibit B either, Your
5 | Honor.

6 | JUDGE MILLER: All right. Tell him to bring -- come
7 | and bring the books.

8 | MR. CHURCHILL: I have no other objections, Your
9 | Honor.

10 | JUDGE MILLER: TMC Exhibit No. 9 is received subject
11 | to the caveats that I've laid down.

12 | (Whereupon, the document marked
13 | for identification as TMC Ex-
14 | hibit No. 9 was received into
15 | evidence subject to the Judge's
16 | rulings made hereto.)

17 | JUDGE MILLER: And I'm going to want to -- I'm going
18 | to ask this man directly, I might as well tell you right now,
19 | Mr. Waysdorf. The sentence that starts, "I am aware of and
20 | agree with the following recorded on TMC's trouble log..."
21 | raises a small flag to me that maybe he never saw the log
22 | himself, that he's taking somebody else's words for those
23 | insertions.

24 | And it -- since he's coming and bringing some re-
25 | cords, I suppose you'll have a record of when he -- after he

1 cancelled with TMC when he joined ExpressTel. And for my
2 information, is ExpressTel a long-distance reseller?

3 MR. HELEIN: Yes, Your Honor.

4 MR. WAYSDORF: I thought it was. Thank you, Your
5 Honor.

6 JUDGE MILLER: All right. Mr. Waysdorf?

7 MR. WAYSDORF: Your Honor, at this time there is --
8 well, mine -- I guess we'll just go right through the docu-
9 ments. The next exhibit is TMC Exhibit 10, and a 65-page
10 existed -- exhibit which is -- consists of business records of
11 TMC Long Distance and has been referred to as a trouble log as
12 a -- and I'd like it identified as TMC Exhibit 10.

13 JUDGE MILLER: The document you've just described
14 will be marked for identification as TMC Exhibit 10.

15 (Whereupon, the document
16 referred to as TMC Exhibit
17 No. 10 was marked for
18 identification.)

19 MR. WAYSDORF: Now I'd like to move its acceptance
20 into evidence.

21 JUDGE MILLER: Mr. Churchill?

22 MS. WOOLF: No. Ms. Woolf, this time.

23 JUDGE MILLER: Oh-ho. Ms. Woolf. Just for, for
24 any-- everybody's information, I just kind of flipped open at
25 leisure here and noted on page 33 of Exhibit 10 at line 4 a

1 Susan Bachman. I'm, I'm, I'm not saying that she's related to
2 Mark S. Bachman, but it may well be. Proceed.

3 MS. WOOLF: I object to this document, Your Honor,
4 on the basis of, of hearsay. And the reason that I make that
5 objection is that we have reason to believe that this document
6 contains false or fraudulent entries.

7 JUDGE MILLER: Specify a few of them. I'm not
8 asking you to specify all of them.

9 MS. WOOLF: I, I am not able to specify those at
10 this time. I am aware that if we call Mitch Lipkin to the
11 stand, who is one of the former TMC witnesses about whom
12 immunity has been spoken --

13 JUDGE MILLER: Right.

14 MS. WOOLF: -- he will testify that this is one of
15 the documents of TMC's that he altered in order to make the
16 documents look better for their case.

17 JUDGE MILLER: How about the other witness?

18 MS. WOOLF: Cathy Miller, I don't know if, if she's
19 going to be able to testify about this specific document or
20 just in general. Because of the hierarchy involved, both of
21 them are needed.

22 JUDGE MILLER: I, I, I, I understand every word you
23 said, but I don't understand what you said. What do you mean
24 a hierarchy involved?

25 MS. WOOLF: The rea-- Cathy Miller -- she has a

1 different last name now, by the way. I don't recall what it
2 is. But for ease we'll call her Cathy Miller.

3 JUDGE MILLER: All right.

4 MS. WOOLF: She received her direction -- or she
5 will testify that she received orders from Mr. Bader and she
6 communicated those orders to Mitch Lipkin, who actually car-
7 ried out the entries.

8 JUDGE MILLER: Mr. Waysdorf?

9 MR. HELEIN: If I may, Your Honor, I can't say
10 anything. I have no idea where Ms. Woolf gets her informa-
11 tion. I do know that these records were presented to us as
12 being filled out by other people and supervised with Mr.
13 Carrabis, and then its -- I'm first hearing now that Mr.
14 Lipkin claims that he had something to do with this trouble
15 log, which is a technical report and is not within the scope
16 of his duties. So, I don't know how to respond to the allega-
17 tion except its been haunting this case and I think prejudic-
18 ing my client for some time, and I don't think it's a valid
19 objection because of that.

20 JUDGE MILLER: Well, let me, let me approach the
21 problem from my end of the, the spectrum. We have several
22 references already to TMC Exhibit 10, so it obviously has
23 probative value. On the other hand, I think you ought to
24 understand that if I accept this into evidence the, the lid's
25 off, off the pot. Do you have any comments on my receipt of

1 Exhibit 10, Mr. Wyatt?

2 MR. WYATT: Your Honor, Mr. Helein mentioned earlier
3 that this is a -- an allegation that has haunted his client
4 throughout this proceeding. Certainly we've reviewed the --
5 Pacific Bell's defense and, and Pacific Bell's basis for, for,
6 for a -- excluding this exhibit -- and is raising serious,
7 serious allegations that, that would -- that will have impli-
8 cations for the Commission's process. At that -- at this
9 juncture, in keeping with the Bureau's position that, that it
10 sees no reason to actively participate at this time, I'll,
11 I'll just, I'll just say, say that, that this, this do-- this
12 document and the, and the allegations concerning this document
13 would raise some, if received into evidence, would raise some
14 concerns with the Bureau.

15 JUDGE MILLER: All right. Well, let me, let me put
16 it this way to you. I, I do not -- really, the mere -- the,
17 the fact that -- and Ms. Woolf has taken a position that she
18 -- on information believes -- she believes that these are --
19 contain false or fraudulent entries. I nevertheless am in a
20 quandary because I have Exhibit 10 as a premise for certain
21 other arguments, even though I may end up not buying them.
22 But, but I'm go-- they -- the premise is if you look at this
23 thing you'll see, you'll see various entries that support my
24 argument that, that there were problems with the switch or
25 problems in general. So, I'm going to ha-- I'm going to have

1 to accept this in evidence. I think it's probative.

2 MR. WYATT: Your, Your Honor --

3 JUDGE MILLER: And, with that, it'll be up, it'll be
4 up -- at this point, the fats in the fire.

5 MR. WYATT: Understood, Your Honor. The Bureau so
6 understands your position. And perhaps for the same reasons
7 that you've for us earlier have -- at, at various times this
8 case has been in a settlement posture --

9 JUDGE MILLER: Well, this is --

10 MR. WYATT: -- and --

11 JUDGE MILLER: -- your only -- this is the only, the
12 only thing I would do, and I'd have to have the agreement of
13 all three Parties, the only thing I would do is I would defer
14 ruling on this till the end of the Admissions Session, which
15 would be -- whether, whether you'll be in New York on a, a
16 lark, Mr. Helein --

17 (Laughter.)

18 JUDGE MILLER: -- or whatever, the point is I, I
19 could defer it until that point. Now -- Mr. Helein?

20 MR. HELEIN: Would it be convenient if I could take
21 -- we could take a five-minute recess so I might confer with
22 my co-counsel as to what posture we should take? Obviously,
23 we are surprised by this allegation and I would like to have a
24 few minutes just to gain his thoughts on this and not hold up
25 the Court.

1 JUDGE MILLER: Well, let me say that I, I'm
2 perfectly willing to give you the time. I'm, I'm not so sure
3 that you're surprised. You didn't, you didn't display a bit
4 of surprise to me. But I think you knew this, this was going
5 to come with this exhibit, Mr. Helein.

6 MR. HELEIN: No. Quite frankly, Your Honor, we've
7 been very careful in preparing our case to eliminate what we
8 conceive would be a bogus issue from it and not be involved in
9 this. So --

10 JUDGE MILLER: All right.

11 MR. HELEIN: -- it is our understanding that this,
12 this, this is a technical log. And I do know for a fact, at
13 least, I shall say, from the standpoint of what my client has
14 told me consistently, this is a technical log maintained under
15 the care and keeping of Bob Carrabis and that Mr. Lipkin would
16 not have had any reason nor access to this log and that he did
17 not touch it. So, I may not have displayed physical surprise,
18 but I will say that from what's been --

19 JUDGE MILLER: I understand --

20 MR. HELEIN: -- going on --

21 JUDGE MILLER: Yes, understand your position.

22 MS. WOOLF: Your -- can --

23 JUDGE MILLER: Yes, Ms. Woolf?

24 MS. WOOLF: Let me just make one other -- let me
25 make another ground for objection which may help, it may not,

1 and that is something that we raised earlier when we were
2 talking about Exhibit 2, Mr. Carrabis's de-- testimony where
3 he re-- first referred to this document. And he did indicate
4 that it was prepared or kept on the desk of a Jane Vogle. And
5 -- so, perhaps -- yeah -- so -- I'd like to also object just
6 on foundational grounds that maybe if we have the person who
7 was right -- maybe if we had a sponsoring witness for this
8 document who was the actual person involved it might help us
9 to, you know, find out the truth --

10 MR. HELEIN: It's --

11 MS. WOOLF: -- in the matter.

12 JUDGE MILLER: Well, let me, let me say this. Now,
13 I've accepted your, your representation that if Mr. Lipkin is
14 put on the stand he isn't going to talk about some document
15 that has not been proffered, he is going to talk about this
16 document. Now, that, that's how -- that's what I'm accepting
17 in evidence.

18 MS. WOOLF: Yes. That is my understanding.

19 JUDGE MILLER: And that's what makes this, that's
20 what makes this volatile. And if I accept it in evidence,
21 the, the -- it goes along with your allegation and puts me in
22 a rather delicate position of -- I don't want to get caught in
23 a position where I either have -- when I'm confronted with a
24 settlement where I would -- where a wrongdoing would -- only
25 an alleged wrongdoer, you understand, if you go back to the

1 old Barberville case -- even an alleged wrongdoer would
2 benefit. And I'll -- I, I've been scrupulously avoiding such
3 a position.

4 But, with that, we're going to take about a five-
5 minute recess so that --

6 MR. HELEIN: Thank you, Your Honor.

7 JUDGE MILLER: -- Mr. Helein and Mr. Waysdorf could
8 consult.

9 (Whereupon, a short recess ensued.)

10 JUDGE MILLER: Back on the record. We broke for
11 about four or five minutes while Mr. Helein and Mr. Waysdorf
12 consulted. The record will show that I have not yet received
13 TMC Exhibit 10, although I have indicated that it has proba-
14 tive value. And I also indicat-- indicated that Ms. Woolf,
15 Ms. Woolf has raised allegations of false and fraudulent
16 entries in that log. And I further indicated that the most
17 that I felt that I could do in, in the interests of this
18 proceeding would be to delay a ruling on this until the end of
19 the Evidentiary Admissions Session, which is liable to be
20 either tomorrow or sometime next week.

21 But if -- Mr. Helein, if you indicate that you don't
22 want to take advantage of, of that brief delay, I'll go ahead
23 and make my ruling right now.

24 MR. HELEIN: Your Honor, I, I think your proposal to
25 defer ruling would be acceptable. We need, since this is the

1 first we have heard of this allegation, have not been alerted
2 to our client that there was even a potential of that being
3 the case, that we do need to confer. And if you would defer
4 your ruling on that, I would appreciate it.

5 JUDGE MILLER: Do you have any objections to my
6 deferring my ruling on 10?

7 MS. WOOLF: No.

8 JUDGE MILLER: Mr. Wyatt?

9 MR. WYATT: No, Your Honor, not at this juncture.

10 JUDGE MILLER: All right. I'm going to defer ruling
11 on 10, but with the full understanding that it's going to be
12 ruled upon -- in the absence of, in the absence of sound
13 reason not to rule, it's going to be ruled on before the end
14 of this Session.

15 MR. HELEIN: Understood, Your Honor.

16 JUDGE MILLER: All right. Ruling reserved on TMC
17 Exhibit 10. And we will move to the next exhibit, Mr. --

18 MR. WAYSDORF: Waysdorf.

19 JUDGE MILLER: -- Waysdorf. I know who you are.

20 MR. WAYSDORF: Well, I just --

21 (Laughter.)

22 MR. WAYSDORF: You may not have known who -- since
23 we've been, unfortunately, trading off here, you may not have
24 known who was --

25 JUDGE MILLER: No, I did. I knew -- I'll tell you

1 something. Since my heart attack, I'll tell you something, I
2 -- my short-term memory is not the greatest.

3 MR. WAYSDORF: I'm happy to see you've recovered so
4 well.

5 JUDGE MILLER: Proceed.

6 MR. WAYSDORF: The next exhibit we'd like to have
7 identified is TMC Exhibit 11. This is a five-page memorandum
8 from Domi-- written by Domingo Carbrera, a Pac Bell employee,
9 to D. R. Shepard. Your Honor, you had asked informally that
10 the source of certain of these Pac Bell exhibits be mentioned
11 and the sponsoring witness identified.

12 JUDGE MILLER: That's right. I want to know who --
13 is Domingo Carbrera, whom you have called as an adverse wit-
14 ness, C--

15 MR. WAYSDORF: No, it's not, but it's --

16 JUDGE MILLER: Wait a minute.

17 MR. WAYSDORF: I'm sorry.

18 JUDGE MILLER: Wait a minute. Oh. No, it isn't.
19 This is a -- oh, this is a Pac -- this is a Pac Bell witness,
20 isn't it?

21 MR. WAYSDORF: Yes, it is. Your Honor, these --
22 this document and a number of others were received from Pac
23 Bell during discovery. This document, in fact, was received
24 as part of the package accompanying interrogatory responses
25 filed by Pac Bell on September 8, 1989. It is cited and

1 | relied on by both Mr. Bader and Ms. Ritchey-- Mr. Ritchey in
2 | their testimony, and in that extent they are in effect the
3 | sponsoring witnesses. As far as authentication, Mr. Carbrera
4 | will be present. Again, we received these documents in dis-
5 | covery and I don't believe that authentication is really in
6 | issue here. But when we're relying on Pac Bell documents, you
7 | know, there is, there is only so much we can do.

8 | JUDGE MILLER: Well, first of all, let's start by
9 | saying that this memorandum written by Domingo A. Carbrera
10 | dated 11/7/86, five pages, no declaration, will be marked for
11 | identification as TMC Exhibit 11.

12 | (Whereupon, the document
13 | referred to as TMC Exhibit
14 | No. 11 was marked for
15 | identification.)

16 | JUDGE MILLER: That's what you wanted, wasn't it?

17 | MR. WAYSORF: Yes, that is what I've requested.

18 | JUDGE MILLER: And you've also indicated that
19 | there's two people that are willing to take responsibility for
20 | answering some questions about that and have been rel-- and,
21 | and have relied on that exhibit?

22 | MR. WAYSORF: Yes, Your Honor. That is correct.

23 | JUDGE MILLER: That's namely Bader and --

24 | MR. WAYSORF: James Ritchey.

25 | JUDGE MILLER: -- Ritchey.

1 MR. WAYS DORF: Yes.

2 JUDGE MILLER: Okay. So, that if, if in addition to
3 Mr. Carbrera, who's also going to be here, we have certain
4 other individuals who are going to say that they used it and
5 what they used it for. I will now hear objections to 11.

6 MS. WOOLF: I'd like just to make a statement for
7 the record.

8 JUDGE MILLER: Go ahead.

9 MS. WOOLF: And, and that is this particular docu-
10 ment that's attached -- that, that's Exhibit 11 was actually a
11 document that TMC produced to Pacific Bell during discovery.
12 We may very well have produced it to them also. But just if
13 you look at the face of this document in the lower right-hand
14 corner, there's a Bates Stamp number and that -- with -- that
15 was the Bates Stamp series used by TMC in their production to
16 us.

17 JUDGE MILLER: What, C0050?

18 MS. WOOLF: Yes. However, I, I don't have an objec-
19 tion to this document. I just wanted to set that on the
20 record. I think this was one of the documents that was sort
21 of -- it crossed. We produced it to them; they produced it to
22 us. We each had had it in our own files. I don't think it,
23 it's an important distinction. And I don't have an objection
24 to this document per se. I would like to note, however, that
25 Attachment 3 is not attached to this.

1 JUDGE MILLER: I'm sorry. Attachment 3?

2 MS. WOOLF: Yes. Is not attached to this document.
3 This document is also -- is a document that Pacific Bell has
4 placed as an exhibit. And in Pacific Bell's Exhibit 23, we do
5 have Attachment 3 appended to it.

6 JUDGE MILLER: Right. And, also, it's indirectly
7 related to Pac Bell 31, which is -- which will be Mr.
8 Carbrera's testimony.

9 MS. WOOLF: Correct.

10 JUDGE MILLER: 23 is identical with -- I mean, yeah.
11 23 is identical with TMC 11, except for the, except for the
12 third --

13 MR. WAYSDORF: Attachment. Apparently so, yes, Your
14 Honor.

15 JUDGE MILLER: Well, you -- do you, do you want to
16 nevertheless -- want to proceed with this document?

17 MR. WAYSDORF: Yes, I do, Your Honor, and let me
18 explain why. On 23, the Attachment 3 was -- is about 20 pages
19 of graphs that did not appear to be significant. The reason
20 why -- Ms. Woolf and I discussed on the telephone how we
21 thought it would be best to proceed with the documents that
22 were tendered by both of us as, as exhibits. And because
23 numerous of our witnesses refer to these in their direct case
24 testimony as identified by our own numbering system, we
25 thought it would create more confusion to withdraw one or the

1 other.

2 JUDGE MILLER: All right.

3 MR. WAYSDORF: So, yes, I would like to go ahead
4 with, with TMC Exhibit 11.

5 JUDGE MILLER: All right. TMC Exhibit No. 11 is
6 received.

7 (Whereupon, the document marked
8 for identification as TMC Ex-
9 hibit No. 11 was received into
10 evidence.)

11 JUDGE MILLER: The record indicate -- Ms. Woolf has
12 indicated that it is substantially similar to Pacific Bell
13 Exhibit 23, so that whoever is reading this record will under-
14 stand that we have two such documents that, that are very
15 similar that are going to be introduced. One is being intro-
16 duced now. One's going to be introduced. And, in addition, I
17 think it's -- the record also reflects that we have people who
18 can testify regarding this exhibit -- Domingo Carbrera, Mr.
19 Bader, and Mr. Ritchey. And, with that, unless there's some
20 people added in the future, that's the name of that tune.
21 Proceed, Mr. Waysdorf.

22 MR. WAYSDORF: Next, I would like marked for iden-
23 tification as TMC Exhibit 12 a 81-page document under the
24 declaration of Stephen L. Bader, which consists of Mr. Bader's
25 telephone logs. That's all I need to say really. I'd like it

1 marked for identification. These were his business records
2 that he kept.

3 JUDGE MILLER: All right. The documents you've just
4 described, 81 pages including a declaration, will be marked
5 for identification as TMC Exhibit 12, and the -- you've so
6 indicated that the sponsor of this exhibit is Stephen Bader.

7 (Whereupon, the document
8 referred to as TMC Exhibit
9 No. 12 was marked for
10 identification.)

11 JUDGE MILLER: Objections?

12 MS. WOOLF: Yes, Your Honor. We object to this on
13 the basis of relevance. There is quite a bit of material in
14 here. Not all of it is relevant to this case. Section 1.354
15 of the Commission's rules state that if material and relevant
16 matter is offered in evidence is in a document where other
17 material is present, such document will not be received, but
18 bas-- but the relevant parts should be taken out so that the
19 Parties can refer to those. And that's what I would request
20 that TMC do here. There, there was no specific -- I don't
21 recall any specific pages being referenced in Mr. Bader's
22 testimony, pages from Exhibit 12, and I know that all of these
23 materials in this lengthy document don't relate to, to this
24 proceeding.

25 JUDGE MILLER: I'm not so sure that I'm -- I want, I

1 want to ma-- use that approach. I'm going to tell you why. I
2 want -- I want it clear that this -- these are a, a set of
3 contemporaneous entries taken --

4 Now, let me ask you this question about the first
5 page, up in the upper right-hand corner. Do I see a 1988?

6 MR. HELEIN: It appears to be such, Your Honor.

7 JUDGE MILLER: What is that?

8 MR. HELEIN: I do not know. I'll try to fi--

9 JUDGE MILLER: And I, I, I assume since you do not
10 know you don't know who put it there either.

11 MR. HELEIN: No, I, I do not, Your Honor. These
12 were developed I think in response to either preparation to
13 the case or in response to any request for discovery by
14 Pacific Bell. But I, I have not myself reviewed these. My
15 other associates and that have and put this together. This is
16 the first time I've seen it. There may be an explanation.
17 I'd be happy to try to get it for you.

18 MS. WOOLF: Excuse me, Your Honor.

19 JUDGE MILLER: Yes?

20 MS. WOOLF: Did I just hear that these documents
21 were produced and developed for this case, because they would
22 not be admissible --

23 MR. HELEIN: No, no.

24 MS. WOOLF: -- in that --

25 MR. HELEIN: No, no, no, no, no. What I meant is is

1 that we -- either we produced these -- I just don't recall.
2 We either produced these for your discovery or in presenting
3 our direct case to indicate the fact that Mr. Bader complained
4 a good deal. We, we, we produced these documents. We didn't
5 create these documents at this stage. These are documents
6 which were created in whatever they were -- year they were --
7 here's a -- if you will look at page 5, there's a 1985 date in
8 the left-hand corner.

9 JUDGE MILLER: Well, are these, are these in chrono
10 order? Are these pages in chrono order?

11 MR. HELEIN: They, they appear to be by month date.
12 Just flipping through them, we've got March, we've got August,
13 we've got September, October, and then we have --

14 JUDGE MILLER: Well, take a -- take page 22, for
15 example --

16 MR. HELEIN: Yes.

17 JUDGE MILLER: -- Mr. Helein.

18 MR. HELEIN: Yes, Your Honor.

19 JUDGE MILLER: I see on page 22 10/30, I guess that
20 is, 10/31?

21 MR. HELEIN: Yes, Your Honor.

22 JUDGE MILLER: And the next page I see 3, 4.

23 MR. HELEIN: I think --

24 JUDGE MILLER: When I write my ID am I suppose to
25 draw the conclusion that the -- nothing happened between 10/31